



# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

*"To Enrich Lives Through Effective and Caring Service"*

900 SOUTH FREMONT AVENUE  
ALHAMBRA, CALIFORNIA 91803-1331  
Telephone: (626) 458-5100  
<http://dpw.lacounty.gov>

DEAN D. EFSTATHIOU, Acting Director

ADDRESS ALL CORRESPONDENCE TO:  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

September 2, 2008

IN REPLY PLEASE  
REFER TO FILE: **MP-6**

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

**PRIVATE DRAIN NO. 728  
ASSESSOR'S PARCEL NOS. 2057-004-900 AND 2057-003-902  
USE AGREEMENT BETWEEN THE LOS ANGELES COUNTY FLOOD  
CONTROL DISTRICT AND THE CITY OF WESTLAKE VILLAGE  
(SUPERVISORIAL DISTRICT 3)  
(3 VOTES)**

**SUBJECT**

This action will allow the Los Angeles County Flood Control District to enter into a Use Agreement with the City of Westlake Village for use of portions of the existing Flood Control District right of way for Private Drain No. 728 for recreational purposes.

**IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE GOVERNING BODY OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT:**

1. Acting as a responsible agency, find that this action is categorically exempt from the provisions of the California Environmental Quality Act.
2. Find that the proposed 20-year Use Agreement between the Los Angeles County Flood Control District and the City of Westlake Village will not interfere with the Los Angeles County Flood Control District's use of said property.
3. Instruct the Chair to sign the Use Agreement and authorize delivery to the City of Westlake Village.

## **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The purpose of the recommended actions is to allow the Los Angeles County Flood Control District (LACFCD) to enter into an agreement with the City of Westlake Village (City) for use of portions of the existing LACFCD right of way for Private Drain No. 728, Assessor's Parcel Nos. 2057-004-900 and 2057-003-902, to install and maintain certain improvements for recreational purposes, specifically including fencing, pedestrian trail, landscaping, an irrigation system, and incidental recreational uses. These actions will allow for the dual use of flood control right of way without interfering with flood control use.

## **Implementation of Strategic Plan Goals**

The Countywide Strategic Plan directs the provision of Community Services (Goal No. 6). The improvements will enhance aesthetics and recreational opportunities in the area, thereby improving the quality of life for the residents of the County.

## **FISCAL IMPACT**

There will be no impact to the County General Fund.

There will be no monetary consideration paid for the Use Agreement since the use of the LACFCD property is for recreational purposes. The Los Angeles County Flood Control Act provides for the LACFCD property to be used for these purposes as long as the public recreational purposes are compatible with the LACFCD purposes of flood control, water quality, and water conservation.

## **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

Private Drain No. 728, Assessor's Parcel Nos. 2057-004-900 and 2057-003-902, are located southerly of Lindero Canyon Road, from Lakeview Canyon Road easterly to approximately Agoura Road in the City.

The Use Agreement is for 20 years with the right to renew up to 20 years with prior notification to, and approval of the LACFCD.

Section 2, paragraph 5 of the Los Angeles County Flood Control Act provides that the "...improvement of existing facilities may involve...aesthetic treatment in order that the facility will be compatible with existing or planned development in the surrounding area of the improvement". Section 2, paragraph 14 of the Los Angeles County Flood Control Act authorizes the LACFCD to "provide, by agreement with other public agencies..., for

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September 2, 2008  
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the recreational use of the facilities, and works of such district, which shall not interfere or be inconsistent, with the primary use and purpose of such lands, facilities, and works by such district."

The Use Agreement has been reviewed and approved by County Counsel as to form.

### **ENVIRONMENTAL DOCUMENTATION**

The City's project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15304(b) of the CEQA guidelines and Class 4(c) of the Environmental Reporting Procedures and Guidelines adopted by your Board on November 17, 1987. These exemptions provide for new landscaping and minor alterations to land. The City is the lead agency for this project and found the project categorically exempt on December 30, 2007.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

This action allows for the use and enjoyment of the LACFCD right of way by the public without interfering with the primary mission of the LACFCD.

### **CONCLUSION**

Please return one adopted copy of this letter and two executed original Use Agreements to the Department of Public Works, Mapping & Property Management Division.

Respectfully submitted,

  
DEAN D. EFSTATHIOU  
Acting Director of Public Works

DDE:PAP:psr

Attachment

c: Auditor-Controller (Accounting Division-Asset Management)  
Chief Executive Office  
County Counsel

**ORIGINAL**

AGREEMENT NO. \_\_\_\_\_  
PRIVATE DRAIN NO. 728  
THOMAS GUIDE NO. 557  
(C7, D6, D7, & E6)  
A.I.N. 2057-004-900 &  
2057-003-902  
THIRD DISTRICT

**USE AGREEMENT**

This Use Agreement, entered into on SEPT. 2, 2008, by and between the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, (hereinafter referred to as DISTRICT)

and

CITY OF WESTLAKE VILLAGE, a municipal corporation, (hereinafter referred to as USER)

**W I T N E S S E T H**

WHEREAS, the DISTRICT owns the fee title for that portion of the Private Drain No. 728, located southerly of Lindero Canyon Road, from Lakeview Canyon Road, easterly to approximately Agoura Road in the City of Westlake Village, State of California, as depicted on Exhibit A, attached hereto, and made a part hereof (hereinafter referred to as PREMISES); and

WHEREAS, the USER proposes to use a portion of PREMISES for recreational purposes; and

WHEREAS, the USER proposes to install and maintain certain improvements on PREMISES, specifically including: landscaping, an irrigation system, pedestrian trail, and incidental recreational uses, hereinafter referred to as IMPROVEMENTS; and

WHEREAS, the DISTRICT and the USER propose to enter into this Use Agreement to establish the construction, operation, maintenance, and financial obligations of each party.

NOW, THEREFORE, in consideration of the promises and faithful performance by USER and DISTRICT of mutual covenants herein contained, for the period of time herein set forth, the DISTRICT and USER hereto mutually agree as follows:

76669

## SECTION I

### USER AGREES:

1. To bear all costs to prepare plans and specifications, construct the IMPROVEMENTS and all other costs of any nature whatsoever which are necessary for the USER's use of the PREMISES.
2. To obtain approval of the plans and specifications for construction of the IMPROVEMENTS, in the form of a no-fee permit from Construction Division, Subdivision and Permits Unit, of the Los Angeles County Department of Public Works, prior to commencing any construction on PREMISES. USER shall also obtain DISTRICT's prior written approval as set forth herein, should USER propose to make any changes to the approved plans and specifications.
3. To bear all costs for installation, operation, and maintenance of all IMPROVEMENTS on the PREMISES by USER made pursuant to this Use Agreement.
4. Maintenance and Operational costs shall be borne by USER upon USER notification to DISTRICT, in writing, three months prior to the start date.
5. To provide DISTRICT with approved As-Built plans upon completion of the IMPROVEMENTS.
6. To keep, inspect and maintain the PREMISES and the IMPROVEMENTS in a safe, clean, and orderly condition at all times during the term of this Use Agreement and not permit trash and debris including but not limited to, rubbish, tin cans, bottles and garbage, to accumulate at any time, nor to commit, suffer, or permit any waste on the PREMISES or IMPROVEMENTS or permit any acts to be done in violation of any laws or ordinances thereon.
7. To remove graffiti from the PREMISES and IMPROVEMENTS and any other walk, fences, and signs that are adjacent to the PREMISES.
8. If DISTRICT's property is damaged by USER or any person entering the PREMISES with the consent of the USER, either expressed or implied, USER shall replace or repair the damaged property within a reasonable time to the satisfaction of the DISTRICT or compensate the DISTRICT for the damage within thirty (30) days of billing.

9. All IMPROVEMENTS installed by USER will be subject to removal by USER at DISTRICT's request pursuant to Section III, paragraph 2, and the cost for removal and restoration of PREMISES shall be borne by USER. At the expiration or sooner termination of this Use Agreement, USER shall, at its own expense, restore the PREMISES to the satisfaction of DISTRICT, to a condition similar to that which existed on the Commencement Date, reasonable wear and tear excepted. If USER fails to remove the IMPROVEMENTS and restore the Premises within two-hundred and seventy-five (275) days after receipt of notice by DISTRICT, DISTRICT may remove the IMPROVEMENTS itself and the USER agrees to reimburse DISTRICT for any and all expenses incurred within thirty (30) days of billing.
10. Without limiting USER's indemnification of the DISTRICT, USER shall procure and maintain in full force and effect during the term of this Use Agreement, insurance policies providing for the following insurance coverage:
- Comprehensive general liability and property damage coverage with a combined single limit liability in the amount of not less than THREE MILLION DOLLARS (\$3,000,000), per occurrence.
  - Worker's Compensation coverage in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the DISTRICT and USER against any loss, claim or damage arising from any injuries or occupation diseases occurring to any worker employed by or any person retained by USER in the course of carrying out the work or services contemplated in this Agreement.
  - In the event USER procures commercial insurance policies for the PREMISES, the County of Los Angeles and Los Angeles County Flood Control District, its governing board, officers, agents, contractors, and employees shall be named as Additional Insureds on all policies of liability insurance. USER shall furnish to DISTRICT a Policy of Insurance evidencing USER's insurance coverage no later than (10) working days after execution of the Agreement, but before USER takes possession of the Premises. Upon renewal of said policy USER shall furnish to DISTRICT a Certificate evidencing USER'S continued insurance coverage as required herein.
  - The DISTRICT may accept, should USER elect to provide, a Certificate of Self-Insurance. The limits of such self-insurance coverage shall meet or exceed those stated herein.

## SECTION II

### DISTRICT AGREES:

1. To review plans and specifications for the IMPROVEMENTS and notify USER of its approval.
2. To grant USER permission to use PREMISES for purposes stated herein.
3. To inspect the PREMISES for compliance with approved plans and specifications.

## SECTION III

### IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

1. USER and DISTRICT shall have no financial obligation to each other under this Use Agreement, except as herein expressly provided.
2. Use of the PREMISES shall be subordinate to the basic flood control, watershed management and water conservation purposes of the area as determined by the DISTRICT's Chief Engineer, and shall in no way conflict with this purpose. The DISTRICT reserves the right to cancel this Use Agreement by giving USER thirty (30) days written notice, should, in its opinion, there develop a substantial incompatibility between the USER's permitted use herein of PREMISES and DISTRICT's current or future use of PREMISES for flood control, watershed management, water conservation, utility, or transportation purposes, arising from any cause whatsoever. It is further understood and agreed that DISTRICT may enter onto the PREMISES and/or temporarily suspend this Use Agreement for flood control, watershed management and water conservation purposes without notice to USER, in order to allow the performance by DISTRICT, its officers, agents, invitees, and employees of emergency services work necessary to protect life, property, or the PREMISES from impending fire, fire damage, earthquake damage, flood damage, road damage, or any other condition the DISTRICT determines to be an emergency. In such cases of emergencies, as the DISTRICT will solely determine, the PREMISES could be subject to temporary closure.
3. Indemnification
  - a. Except to the extent caused by DISTRICT's negligence or intentional acts, USER agrees to indemnify, defend, and hold harmless DISTRICT, its governing board, officers, employees, engineers, contractors, and agents against any claims, demands, liabilities, damages, costs, and expenses of any nature whatsoever, arising from or in connection with (1) the use, construction,

reconstruction, maintenance, operation, or removal by USER of any improvements constructed or maintained by USER on, above or under the PREMISES, including the use of PREMISES by third parties, or (2) breach of any of USER's obligations under this Agreement. For the purposes of this Section 3, DISTRICT shall mean the Los Angeles County Flood Control District, the County of Los Angeles and their governing boards, officers, agents and employees, and USER shall mean the City Westlake Village and its governing boards, officers, agents and employees.

- b. Except to the extent caused by DISTRICT's negligence or intentional acts, DISTRICT shall not be liable for any loss occurring due to the operation of the PREMISES by USER; for injury, loss, death to any person whomsoever, including third parties, any damage or destruction to the PREMISES, at any time, occasioned by or arising out of, indirectly, solely, or contributory by: (1) any act, activity or omission of USER or anyone holding under USER; (2) the occupancy or use of the PREMISES part thereof, by or under USER; and/or (3) any state or condition of the PREMISES caused by or relating to USER's improvements thereon or any part thereof.
  - c. Except to the extent attributable to the concurrent negligence, or misconduct of USER, DISTRICT agrees to indemnify, defend and hold harmless USER, its governing council, Officers, employees, engineers, contractors, and agents against the claims of any third parties for any damage, destruction, personal injury or death, attributable to the negligence or misconduct of the DISTRICT.
  - d. Each party agrees to include the other within the protection of any indemnification clause contained in any contract relating to the PREMISES.
4. USER waives all rights to damages and releases DISTRICT of all liability for any loss, cost or expense USER may sustain as a result of damage to or destruction of USER's improvements on or adjacent to the PREMISES caused by DISTRICT's flood control, watershed management or water conservation facilities and operations.
  5. DISTRICT, its Board, any authorized officer, engineer, employee, contractor, through its agents or representatives, shall have full right and authority to enter in and upon PREMISES at any and all reasonable times during the term of this Use Agreement all without interference or hindrance by USER, its agents, officers, contractors, employees, or representatives for the purpose of inspecting the same and to serve or post any notice required or permitted by law for protection of any right or interest of DISTRICT.

6. Except as to fuels, lubricants and products associated with motorized vehicles, equipment, gardening or maintenance-related substances, or all of the above, USER shall not cause or allow the presence, use, storage, or disposal of any hazardous substances on or about the PREMISES without the prior written consent of the DISTRICT which consent shall not be unreasonably denied. In the event of spillage, leakage or escape or any hazardous substance onto the PREMISES, USER shall immediately notify DISTRICT by calling (800) 675-4357. If the spillage, leakage or escape was caused by USER, USER shall promptly remove any such substance from the PREMISES to the DISTRICT's satisfaction. In addition to removing any of USER's hazardous substances, USER shall be liable for and reimburse DISTRICT for any and all cost and expenses that DISTRICT may incur or suffer as a result thereof. Such responsibility shall include cost or expenses as DISTRICT may incur by reason of Federal, State, local or other authoritative agency's laws and regulations. Notwithstanding the foregoing, USER shall have no responsibility regarding any spill, leak or escape associated with any of DISTRICT's tenants, licensees or easement holders.
7. USER shall be the lead agency and will provide the necessary environmental clearances and any other permits as required by law in connection with the IMPROVEMENTS.
8. Use of the PREMISES is limited to the construction, operation, maintenance and use of IMPROVEMENTS, in accordance with the terms and conditions of this Use Agreement.
9. The term of this Use Agreement shall be for twenty (20) years (Initial Term), subject to the DISTRICT's right to terminate as provided for in Section III, subsection 2 above.
10. USER shall have the right to renew this Use Agreement beyond the Initial Term for a period not to exceed twenty (20) years, provided a written request from the USER is received by the DISTRICT no earlier than twelve (12) months or later than six (6) months prior to the end of the Initial Term and upon written approval of DISTRICT. The DISTRICT shall have the right to cancel this Use Agreement for any reason, after the Initial Term, upon and any subsequent permit(s) affecting the PREMISES issued by the (30) days' written notice to USER.
11. Except as otherwise stated in this Use Agreement, this Use Agreement can be cancelled by USER as provided herein or terminated by DISTRICT for breach of any term or provision in this Use Agreement, provided, however, that a failure to perform any provision, covenant or condition of this Use Agreement shall not be deemed a breach if cured within (30)

days of written notice of breach. The DISTRICT shall notify USER, in writing, identifying the breach, and provide USER thirty (30) days to cure the breach.

12. Notices

All notices herein to be given or given by either party shall be in writing and shall be deemed to have been given three business days after deposit in the U.S. Mail addressed as follows:

To DISTRICT:

Mapping & Property Management Division  
L.A. County Flood Control District,  
Department of Public Works  
900 South Fremont Avenue  
Alhambra, CA 91802-1460

tel.: (626) 458-7065 or (626) 458-7072; fax (626) 289-3618  
[for Emergencies, contact (626) 458-HELP (4357)]

To USER:

City of Westlake Village  
Attention: City Engineer  
31200 Oak Crest Drive  
Westlake Village, CA 91316  
(818) 706-1613

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IN WITNESS WHEREOF, the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, by order of its Board of Supervisors, has caused this Use Agreement to be subscribed by the Chair of the Board of and the seal of the DISTRICT to be affixed hereto and attested by its executive Officer of the Board of Supervisors, and the USER has hereunto subscribed their names, the date and year first above written.

USER:  
CITY OF WESTLAKE VILLAGE,  
a municipal corporation

By *Philippa Kiessig* 6 June '08  
Philippa Kiessig, Mayor Date

Approved as to Form:

*T. Boga*  
Terence Boga, City Attorney



DISTRICT:  
LOS ANGELES COUNTY FLOOD CONTROL DISTRICT  
a body corporate and politic

By *George B. Bunte*  
CHAIR, BOARD OF SUPERVISORS

ATTEST:

Sachi A. Hamai, Executive Officer  
of the Board of Supervisors of the County of Los Angeles

By: *[Signature]*  
Deputy



I hereby certify that pursuant to  
Section 25103 of the Government Code,  
delivery of this document has been made.

SACHI A. HAMAI  
Executive Officer  
Clerk of the Board of Supervisors

By *[Signature]*  
Deputy

Approved as to Form:  
RAYMOND G. FORTNER, JR.  
County Counsel

By: *Carole B. Suzuki*

**ADOPTED**  
BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

34 SEP 02 2008

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

## ACKNOWLEDGMENT

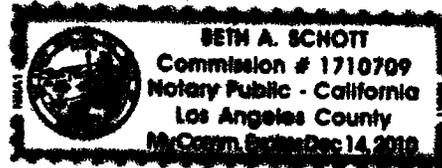
State of California  
County of Los Angeles )

On JUNE 6, 2008 before me, Beth A. Schott, Notary Public  
(insert name and title of the officer)

personally appeared PHILIPPA KLESSIG  
who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~  
subscribed to the within instrument and acknowledged to me that ~~he~~/~~she~~/~~they~~ executed the same in  
~~his~~/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/~~her~~/~~their~~ signature(~~s~~) on the instrument the  
person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

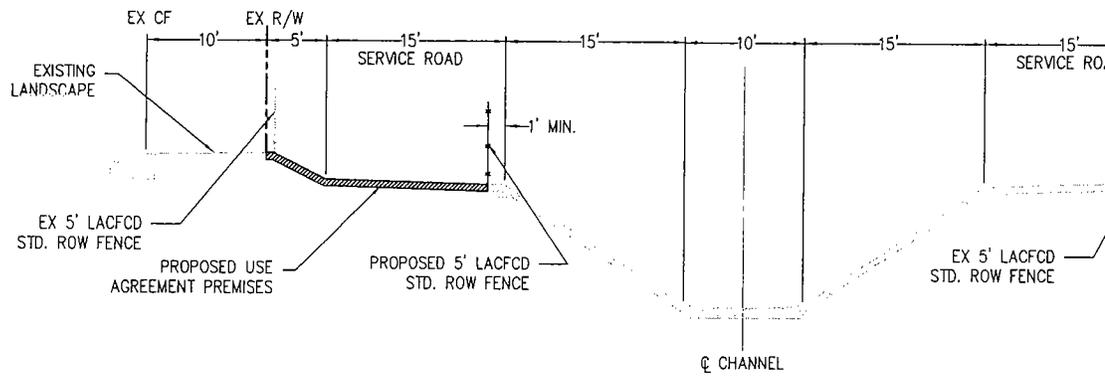
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

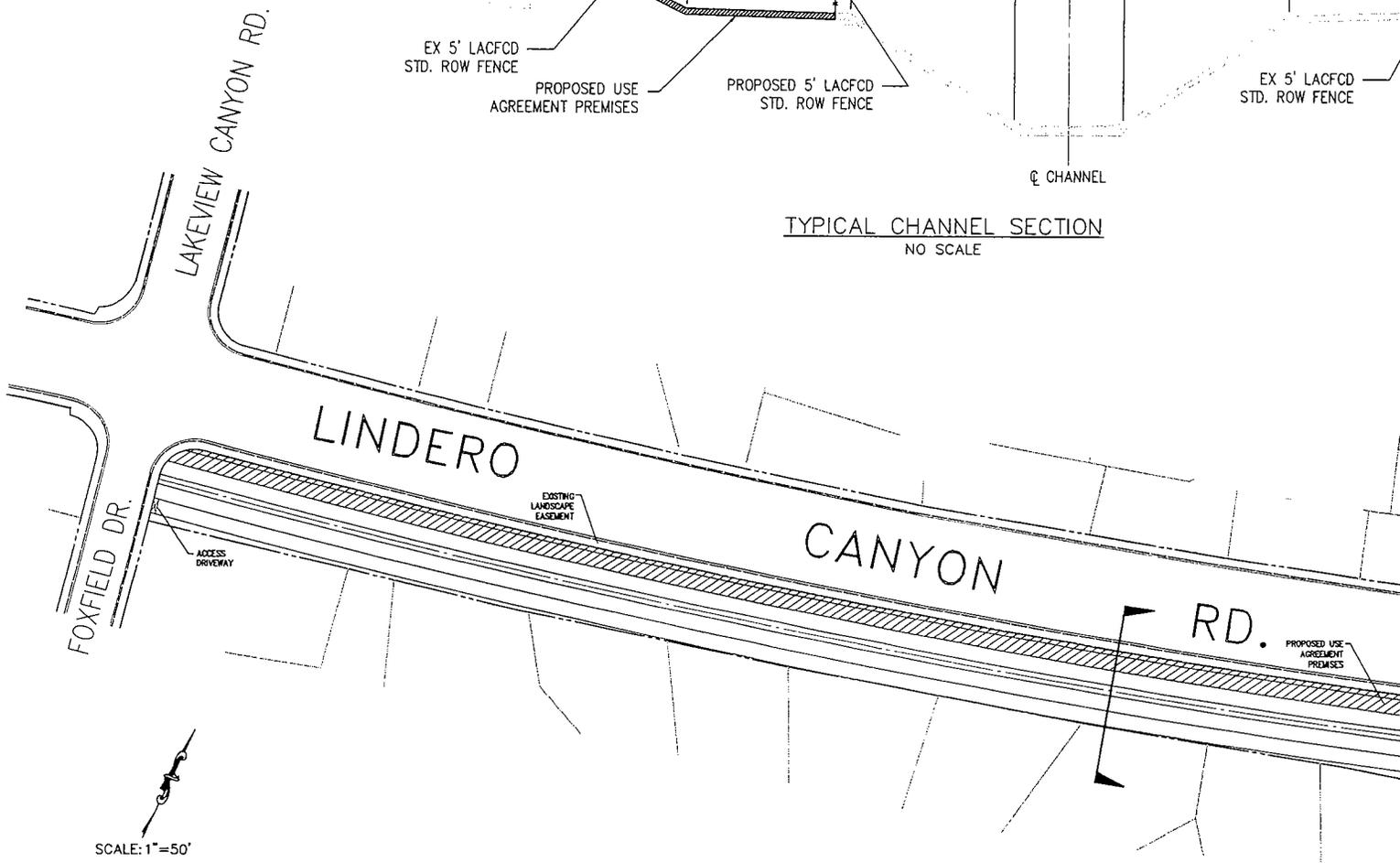


Signature Beth A. Schott (Seal)





TYPICAL CHANNEL SECTION  
NO SCALE



SCALE: 1" = 50'

